



THE EMPLOYMENT TRIBUNALS

Between:

Claimant: Mr B Addems

Respondent: Systems Hygienics Limited

**Held at London South Employment Tribunal on 31 October 2018 by
Employment Judge Baron**

Lay Members: Ms B Leverton & Ms C Upshall

FURTHER JUDGMENT OF THE EMPLOYMENT TRIBUNAL ON AN APPLICATION FOR RECONSIDERATION UNDER RULE 70 OF THE EMPLOYMENT TRIBUNALS RULES OF PROCEDURE 2013

It is the judgment of the Tribunal in accordance with rule 72(1) that the application on behalf of the Claimant dated 19 December 2017 for a reconsideration of the judgment as follows:

- 1 That the judgment of the Tribunal dated 14 November 2017, a copy of which was sent to the parties on 6 December 2017, be varied by the addition of the following:

5A. It is declared in accordance with regulation 30(3) of the Working Time Regulations 1998 that the Claimant's complaint that the Respondent had refused to permit him to exercise a right he had under regulation 10 of the Regulations is well-founded.
- 2 That the Claimant's application for a reconsideration of the judgment fails in all other respects.

REASONS

- 1 On 19 December 2017 the Claimant's solicitors applied for a reconsideration of the judgment of the Tribunal dated 14 November 2017, a copy of which was sent to the parties on 6 December 2017. That was a judgment of a Tribunal chaired by EJ Hall-Smith sitting with Ms Leverton and Ms Upshall.¹ I was nominated by the Regional Employment Judge to consider the application. By a judgment dated 12 June 2018 I refused

¹ I will refer to the reasons for that judgment as 'the Reasons'.

various elements of the application in accordance with rule 72(1) of the 2013 Rules but did not refuse other elements. Both parties have agreed to this matter being dealt with without a hearing.

- 2 It is regretted that the Tribunal administration has either destroyed chairman's copy of the bundles, or simply cannot locate them. I had them when considering the application initially. We were satisfied that we could determine the remaining parts of the application without the bundles.
- 3 There are two live issues both relating to the Working Time Regulations 1998. The first point made by the Claimant's solicitors was that in paragraph 133 of the Reasons the Tribunal stated that it had found that 'there were breaches of the Claimant's right to daily rests and to weekly rests'. The Tribunal was therefore obliged to make a declaration in accordance with regulation 30(3).
- 4 In paragraph 135 of the Reasons the Tribunal said the following:

In circumstances where it appeared from the documentary evidence that there was a breach of Regulation 10 of the 1998 Regulations in respect of 18-19 January 2016, the Tribunal found the Claimant's complaint in relation to such a period well founded.
- 5 The Respondent's solicitors said the following:

The Claimant is seeking a declaration. The Respondent could at first blush be agnostic as to whether one is required; given this is a single instance. However no such declaration should be made where there has not in fact been a breach of Regulation 10, because no request for this break was refused.
- 6 The point about no request having been made was considered by the Tribunal in paragraphs 133 and 134 of the Reasons where reference was made to *Grange v. Abellio London Ltd* [2017] ICR 287. We agree with the Claimant on this point. Regulation 30(3) imposes an obligation on the Tribunal to make a declaration. There is no discretion available to the Tribunal, although there is a discretion as to whether to award compensation. We have varied the original judgment accordingly.
- 7 We decided that any consideration of a remedy for the Claimant should await the outcome of the current appeal to the Employment Appeal Tribunal in this matter.
- 8 The second point made by the Claimant's solicitors was that '[e]xamples of breaches of Regulation 10 were highlighted in detail in the Claimant's written submissions and the Employment Tribunal should have made findings in respect of each of them.' They are quite correct that in her written submissions Miss Stroud set out in paragraphs 44, 46 and 47 various instances from 2014 on which she said there had been a breach of the 1998 Regulations.
- 9 It was noted in paragraph 127 of the Reasons that it had been the Respondent's contention that only matters occurring on or after 14 January 2016 were within the statutory time limit. I cannot see that the Tribunal articulated a specific finding that that was the correct date but I agree that

it is correct. The Tribunal found in paragraph 132 of the Reasons that time should not be extended.

- 10 It is our conclusion that it is not necessary for the Tribunal to make specific findings on factual allegations where the claims are well out of time. The lay members are quite clear in their recollection that that point was considered by the Tribunal.

Employment Judge Baron

31 October 2018